informed by Mr Selvam this morning that the vessel is seaworthy, and but for the fact that she is currently under arrest, would sail. I had in mind the possibility of adjourning this application with liberty to restore, so as to enable either the plaintiff or defendant to apply for an order of appraisal under O 70 r 22. However, that would obviously take time, to the detriment of the defendant. I am also influenced against this course by the fact that Mr Selvam has indicated to me that the defendant would be prepared to procure a guarantee of the Club in the sum of $26 million, which is substantially the security the plaintiff wants, although it is required by the plaintiff in another form.

As to quantum therefore, I have on the one hand the valuation of approximately $20 million given by Mr Peirera, who is a surveyor recognized by this court. That figure is challenged by the plaintiff, who has put forward the valuation of another surveyor who is less well-known in this jurisdiction, but those constituent companies have antecedents with which I cannot possibly take issue.

I have to consider the merits of the two valuations. I am impressed by the point made by Mr Karthigesu concerning the fact that Mr Peirera's valuation was arrived at on a forced sale basis. I am not persuaded that this is the basis upon which the valuation ought to have been prepared, and I am inclined to prefer the valuation of Mr Bando, the defendant's valuer.

I am therefore going to make the following orders:

(1) an order in terms of prayer 1, abridging the time for service of this application;
(2) an order in terms of prayer 2, save that the figure will read $26 million instead of $19.7 million;
(3) there will be an order in terms of prayer 3 of the application;
(4) the costs of this application will be reserved.

There will be liberty to either party to apply.

I hope that the parties will be able to agree on the terms of the guarantee. Certainly you are welcome to come back to me if you think I can assist in any way.

*Order accordingly.*

Solicitors: *Cooma Lau & Loh & M Karthigesu*; *Drew & Napier.*

Reported by *Al-Mansor Adabi*

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## APPENDIX*

**The Ship 'Pacific Charger'**

**General Motors New Zealand Ltd & Ors v The Ship 'Pacific Charger'**

COURT OF APPEAL (NEW ZEALAND) – CA 101/81
COOKE J (PRESIDING), SOMERS & MAHON JJ
30 JULY 1981

*Shipping – Release of vessel – Bond by protection and indemnity association – Stay of release – Admiralty Rules 1975, r 17(4)*

*Civil Procedure – Stay of proceedings – Stay of release of ship pending appeal granted upon conditions – Appeal against one of the conditions*

*GP Barton* (*BM Rudkin* with him) for the appellants.
*CR Carruthers* for the respondent.

**Cooke J** (delivering the judgment of the court): These are two appeals relating to the ship 'Pacific Charger'. The first is an appeal from a decision of Savage J in the High Court on 24 July 1981 ordering the release of the vessel under certain terms under r 17(4) of the Admiralty Rules 1975. It is common ground that NZ$7,500,000, the amount of the bond fixed by the judge, was appropriate as to amount. The only issue is whether he was wrong to direct that the bond be given by the Britannia Steam Ship Insurance Association Ltd, a protection and indemnity association based in London.

Rule 17(4) gives the court a discretion. We accept Mr Barton's submission that it must be exercised in accordance with the principles of admiralty law and within the spirit and intention of the Admiralty Rules.

The judge's reasons for the way in which he exercised his discretion were set out in writing and made available on 27 July 1981. Having considered those reasons and listened to the argument presented by Mr Barton today, all members of the court are satisfied that there was no error in the judge's approach. In our view he exercised his discretion in accordance with the intention and spirit of the rule, nor has there been shown to be any principle of admiralty law with which his decision could be said to be in conflict. He was well entitled to accept this long-established organization of high international standing as a reliable bondsman for $7,500,000 in New Zealand currency. The new evidence tendered to this court and admitted de bene esse does not alter our view. We would not be justified in disturbing the admirable judgment of Savage J and that appeal will be dismissed.

The second appeal is subsidiary. After the decision of the judge already referred to, the plaintiffs applied to him for a stay of proceedings, that is to say a stay of the release of the ship, pending an appeal to this court. Savage J granted the stay upon certain conditions. The plaintiffs, although they thereby obtained the benefit of prolonging the arrest of the ship in New Zealand for a time, now seeks to appeal against one of the conditions; namely, the condition that the plaintiffs give security to the registrar in a form to be settled by him that they will pay, in the event of the appeal failing, the costs that arise in

* This appendix is included as this important NZ Court of Appeal decision does not appear to have been reported elsewhere. We are grateful to Mr GP Selvam for making a copy of this case available to us.

relation to the holding of the ship in New Zealand until the disposal of the appeal and that arise out of the delay in taking the ship to the ship repairers.

Assuming that an appeal lies in that selective way, we hold that the condition was a reasonable one in all the circumstances and that this appeal likewise should be dismissed.

The respondent is entitled to costs and will be awarded $300 to cover both appeals.

Counsel for the appellant has applied for conditional leave to appeal to Her Majesty in Council in both cases. He accepts that the application is dependent on the discretion of the court under r 2(b) of the Privy Council Rules of 1910. In our view it has not been shown that the question involved in either appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision. Accordingly, each application is dismissed. This of course does not prevent the appellants from applying to their Lordships of the Privy Council for special leave should the appellants be so advised.

*Order accordingly.*

Solicitors: *BM Rudkin* (Wellington); *Chapman Tripp* (Wellington).

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## Public Prosecutor v Tan Ho Teck

HIGH COURT (SINGAPORE) – CRIMINAL CASE NO 19 OF 1985
THEAN AND RAJAH JJ
6 MARCH 1987

*Criminal Law – Murder – Intoxication – Defence of – Delirium due to acute alcoholic intoxication – Insanity caused – Acquittal – Penal Code (Cap 103, 1970 Ed), ss 85(2)(b), 302*

*Criminal Procedure – Statement taken from accused under s 120(1) of the Criminal Procedure Code (Cap 113, 1970 Ed) – Whether caution must be administered – Whether caution was implicit in s 120(2) of the Code – Criminal Procedure Code (Cap 113, 1970 Ed), ss 120(1), (2)*

The accused was charged with causing the death of his brother by stabbing him. The evidence was that A had become upset because of his inability to pay a debt owed to his uncle and because of an argument with his brother. The accused had consumed a whole bottle of brandy and whilst intoxicated, he fatally stabbed his brother and injured his sister. The accused's defence was that he was so heavily intoxicated that he did not know what he was doing. During the trial, counsel for the accused objected to the admission of a statement taken from the accused under s 120(1) of the Criminal Procedure Code (Cap 113, 1970 Ed) on the ground that no caution was administered before the taking of the statement and that this caution was contained in or was implicit in s 120(2) of the Code.

**Held,** acquitting the accused on the ground of intoxication: (1) Section 120(2) of the Criminal Procedure Code does not prescribe any caution to be administered in taking the statement. The statement taken from the accused under s 120(1) of the Code is thus admissible.

(2) Having considered all the evidence, the court is satisfied on a balance of probabilities that the accused at the material time when he stabbed his brother and sister was suffering from delirium due to acute alcoholic intoxication and that by reason of the intoxication he was insane at the time of the stabbing and did not know what he was doing.

(3) The accused is to be kept in safe custody pending the order of the Minister under s 314 of the Criminal Procedure Code.

**Legislation referred to**
Criminal Procedure Code (Cap 113, 1970 Ed) ss 120(1), (2), 121(5), (6), 313, 314
Penal Code (Cap 103, 1970 Ed) ss 85(2)(b), 302

*Geraldine Pang* (State Counsel) for the Public Prosecutor.
*Madan Assomull* for the accused.

*Cur Adv Vult*

**Thean J** (delivering the judgment of the court): The accused, Tan Ho Teck, is charged for having committed murder by causing the death of his brother, Tan Kah Kuan, on 18 February 1984 at about 2.50 pm at Block 118, Bukit Merah View, #10-99, Singapore, an offence punishable under s 302 of the Penal Code (Cap 103, 1970 Ed). Prior to the incident, the accused was living at the flat with his younger sister, Tan Lay Tin and his younger brother, Tan Kah Kuan, the deceased. Of the three of them, the deceased was the youngest. Living with them also is a friend of the accused, one Michael Liew. At that time the accused was by occupation a casual labourer, but at the date of the incident he was unemployed; the deceased was a coffee-shop assistant. Their mother left them long ago when they were very young and their father passed away in 1983.

On the morning of 18 February 1984, at about 8 am, Tan Lay Tin ('Lay Tin') was awakened by somebody knocking at the front door and calling out loudly for the door to be opened. She recognized the voice as that of her second uncle, Tan Tiong Bin. But she was asked by the accused not to open the door; the accused said that the uncle was coming to collect money from him. Accordingly, the door was not openedd and, eventually, after waiting for about ten minutes, the uncle left. Later that morning, Lay Tin telephoned the deceased, who, on the previous night, had stayed at their aunt's flat. She narrated to the deceased that their uncle came that morning and that she did not open the door to him, as she was asked by the accused not to do so because the uncle came to collect money from the accused. The deceased told her that he would return to the flat later that day. Return he did later that morning, between 10 am and 12 noon.

After his return, the deceased, Lay Tin and the accused had a discussion on the money owed by the accused to their second uncle, and Lay Tin tried to call their uncle on the telephone with a view to speaking to him about the money but without success, as the line was